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Situation of human rights in Iraq

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, Andreas Mavrommatis, in accordance with Assembly resolution 56/174 of 19 December 2001.

* A/57/150.

** This report is being submitted on 20 August 2002, so as to include as much updated information as possible.

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Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq

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I. Introduction

1. This interim report of the Special Rapporteur on the situation of human rights in Iraq is submitted to the General Assembly at its fifty-seventh session pursuant to Assembly resolution 56/174 of 19 December 2001, as well as Commission on Human Rights resolution 1991/74 of 6 March 1991. The mandate of the Special Rapporteur was renewed for a further year by Commission resolution 2002/15 of 19 April 2002.

2. Unless otherwise stated, the report covers the period from 21 February to 4 July 2002. The report should also be read in conjunction with the Special Rapporteur's report to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/44).

3. It should be noted that, as the previous report of the Special Rapporteur was finalized just prior to the beginning of the fifty-eighth session of the Commission on Human Rights in March 2002, the current report only briefly summarizes developments following that session of the Commission (i.e., in the period from 26 April to 4 July 2002). As requested by the Commission in its resolution 2002/15, the Special Rapporteur intends to submit a more comprehensive report at the fifty-ninth session of the Commission.

4. The report also takes account of various comments submitted in writing and orally by the Government of Iraq, including the response of the Government of Iraq to the 2001 report of the Special Rapporteur to the Commission at its fifty-seventh session (E/CN.4/2001/42) and his previous interim report to the General Assembly at its fifty-sixth session (A/56/340), the Government's response to recommendations and suggestions by the Special Rapporteur, as well as other communications referred to in detail in the present report.

II. Developments since the fifty-eighth session of the Commission on Human Rights

5. Since his appointment in December 1999, the Special Rapporteur has continuously sought to establish a constructive dialogue on human rights with the Government of Iraq, with a view to improving the human rights situation in the country. In this regard, he welcomes the fact that the Government accepted his first exploratory visit in February 2002 (see E/CN.4/2002/44 for a summary account of the visit).

6. The Special Rapporteur also welcomes the continuation of the dialogue following the visit. During the reporting period, the Special Rapporteur devoted most of his efforts to the essential follow-up activities related to his mission to Iraq. He held several meetings in Geneva with representatives of the Government of Iraq. The Special Rapporteur regrets that, although the Government did cooperate, this cooperation, although improved, did not attain the level, detail and substance he had expected.

7. In his report to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/44), the Special Rapporteur reiterated his request for additional information regarding specific issues which he put forward during his mission in February. The report notes in paragraphs 70 and 71:

"70. Furthermore, as discussed during the previous meetings with government ministers and others, the Special Rapporteur pointed out that he would be looking forward to receiving the following information:

"A list of all crimes that currently carry the death penalty;

"A copy of the study currently being finalized by the Ministry of Justice and others which proposes the reduction of the sentence for certain crimes from death penalty to a lesser sentence;

"A list of all executions carried out in Iraq during the past two years (2000 and 2001);

"Additional written information regarding the planned reforms in the prison sector, as well as information as to the progress of implementation of these reforms;

"An explanatory note clarifying the decree permitting the changing of nationality/ethnicity to Arab;

"An explanatory note regarding the current land reform cultivation plan/scheme currently being carried out in the north (as briefly described by the Minister of the Interior);

"An explanatory note regarding the status and authority of the special courts;

"An explanatory note clarifying the decree regarding the naming of children.

"71. In particular, the Special Rapporteur underlined the necessity of receiving the information requested with regard to the death penalty so that the issue of the right to life set out in article 6 of the International Covenant on Civil and Political Rights could be properly dealt with."

8. During a meeting on 1 April 2002 with the Permanent Representative of Iraq to the United Nations in Geneva, the Special Rapporteur reiterated the need for effective follow-up and urged the Government to provide the information requested in advance of a planned in-depth meeting with a delegation from Iraq, in order to review progress and developments.

9. In the context of this follow-up to the requests for information put forward by the Special Rapporteur, the Government provided the following documentation in the period from 1 April to 28 June 2002:

(a) Note verbale dated 16 April 2002 regarding investigations carried out by the Ministry of the Interior into citizens' complaints of ill-treatment by the police authorities (annex I);

(b) Note verbale dated 17 April 2002 on the issue of exploitation of agricultural land in northern Iraq (annex II);

(c) Note verbale dated 19 April 2002 regarding the decree providing for a change of ethnicity (annex III);

(d) Note verbale dated 19 April 2002 regarding choices of names for newborn infants (annex IV);

(e) Note verbale dated 8 May 2002 regarding the composition of the special courts and the review of the death penalty (annex V. This note was also accompanied by a note from the Government, which allegedly provides information about the activities, including alleged violent and armed activities, of the Supreme Council of the Islamic Revolution in Iraq against the Government of Iraq. The note is not provided as an annex, as it falls outside the mandate of the Special Rapporteur).

10. On 10 May the Special Rapporteur had another meeting in Geneva with the Permanent Representative of Iraq to the United Nations in Geneva. The Special Rapporteur pointed out that he welcomed the submission of information from the Government, that he regretted that the information was not very detailed and that more comprehensive information was expected, as promised. He also noted that some of the most important information requested, in particular with regard to the right to life and the death penalty, had not been received.

11. The Special Rapporteur also suggested that at the end of June the more comprehensive meeting planned should be held in Geneva, where a representative of the Department for Human Rights of the Ministry of Foreign Affairs of Iraq would be present. Following the meeting, the Special Rapporteur addressed a letter on 14 May to the Permanent Representative in Geneva, in which, inter alia, the following was stated:

> "Further to our constructive discussions during our meeting on Friday, 10 May 2002, I have the pleasure to suggest, in writing, that a meeting between representatives of your Government, including officials from the Human Rights Department of the Ministry of Foreign Affairs, take place at the end of June, preferably during the days between 21 and 26 June. However, I remain at your disposal to meet at any other time which might be more suitable to you.
>
> "Further to our previous discussions in Baghdad as well as the requests outlined in paragraph 70 of my report to the Commission on Human Rights (E/CN.4/2002/44), I would suggest that the meeting focus on the following main issues:
>
> 1. The right to life (including issues pertaining to the death penalty);
>
> 2. The special courts;
>
> 3. Allegations regarding 'Arabization';
>
> 4. Reform in the prison sector;
>
> 5. Agreement on the continuation of the dialogue and next visit to Iraq.
>
> "I would expect that our exchange of views will be conducted in an open and frank manner and that the different subjects can be examined in detail with a view to continuing our constructive dialogue on human rights and eventually contribute to the promotion and protection of all human rights in Iraq."

12. The Government subsequently informed the Special Rapporteur that the Permanent Representative of Iraq to the United Nations in Geneva had been authorized to meet with him. A meeting was held on 28 June 2002 at the premises of the Office of the High Commissioner for Human Rights in Geneva. While the Special Rapporteur appreciates the cooperation with the Permanent Representative of Iraq, he would have hoped that a delegation from the Department for Human

Rights of the Ministry for Foreign Affairs of Iraq would have attended the meeting, as this is the key governmental institution dealing with human rights in Iraq and would have been in a position to reply to questions in detail.

13. During the meeting, the Government handed over a note containing certain additional information, requested during previous meetings, regarding (a) the reforms carried out by the Minister of Labour and Social Affairs in the prison sector; (b) the reduction of penalties; (c) commutation of sentences; (d) the number of death sentences carried out over the past two years (2000 and 2001); and (e) special courts (see annex VI). The Special Rapporteur again welcomed the continuation of the dialogue. However, he noted that he was disappointed with the lack of detail in the information provided thus far. He also regretted that no delegation from the Department for Human Rights in the Ministry for Foreign Affairs had been dispatched. The Special Rapporteur noted that, while cooperation continued and more replies had been given, the degree of compliance with his recommendations was limited and replies were either delayed or lacked the necessary details.

14. On 1 July 2002, the Special Rapporteur sent a letter to the Government, requesting additional clarification on certain issues discussed during the meeting. The letter, inter alia, read as follows:

> "As noted during our discussions, many of these are repetitions or requests for additional clarifications of my previous requests:
>
> "1. As I have stated on several occasions, I deem it essential to be provided with the names of all persons executed in 2000 and 2001 in Iraq, including dates of trial, appeal and execution, and crimes each person was convicted for, including an indication of the relevant provisions in law.
>
> "2. Additional information regarding the review of crimes currently carrying the death penalty as maximum sentence, with specific indications, if possible, of which crimes are affected by this review, and if possible, a copy of the draft study being prepared by the committee entrusted with this task, and an indication of the estimated time of completion of the review.
>
> "3. How many persons have benefited, from 2000 until now, from legislation and decrees reducing death sentences to lesser sentences?
>
> "4. Of all persons executed in 2000 and 2001, how many were executed under article 256 of the Penal Code and/or other penal provisions which relate to national security?
>
> "5. Which measures have been taken since my visit to Iraq in February 2002 to improve the conditions in the section of the Abu Ghraib prison assigned to persons sentenced to death ("death row")?
>
> "6. Which other measures have been taken to improve the conditions in the Abu Ghraib prison in general since my visit, including information regarding the progress in the construction of the new prison facilities being constructed in Abu Ghraib (including dates or expected dates for entry into use)?
>
> "7. Further information regarding the justification for the existence of the special courts, including further information regarding the composition,

authority and rules of procedure of the special judicial committee which reviews the verdicts of the special courts.

"8. Out of the total number of death sentences in 2000 and 2001, how many were handed down by the special courts?

"9. Further clarification regarding Revolutionary Command Council Decree No. 199 of 6 September 2001, which allows persons registered as non-Arab to change their ethnicity to Arab. In particular, a clarification of why only the change to Arab ethnicity, and not other ethnicities, is provided for, as this provision could be construed as discriminatory.

"10. Further clarification with regard to the discussed allegations regarding 'Arabization'; that is, allegations claiming that non-Arabs are being forcefully displaced from certain areas in the country, and that Arab populations are being moved into these areas.

"11. A brief note on the impact of Security Council resolution 1409 (2002) of 14 May 2002 on the humanitarian situation in Iraq."

15. Following the meeting on 28 June 2002, the Permanent Mission of Iraq submitted some additional notes verbales. As no official translation of these documents could be obtained before the submission of the present report, the Special Rapporteur will consider these notes in his report to the Commission at its fifty-ninth session in 2003.

III. Allegations of human rights violations committed by the Government of Iraq

16. During the reporting period, the Special Rapporteur continued to receive allegations of human rights violations committed by the Government of Iraq from various sources. These allegations relate to extrajudicial killings, torture, cruel, degrading and inhuman treatment and punishment, forced displacement (the policy of "Arabization"), the lack of fair trial, freedom of expression and association, religious freedom and other rights. This information has provided some of the background material which the Special Rapporteur draws on in his discussions with the Government of Iraq.

17. As noted in his report to the Commission on Human Rights, during his visit to Iraq in February 2002, the Special Rapporteur gathered considerable information regarding alleged human rights violations by the Government. The Special Rapporteur received information from several individuals claiming to have directly witnessed human rights violations. In particular, the Special Rapporteur received information about secret detention sites, where allegedly torture, cruel, degrading and inhuman treatment and punishment is widespread. He intends to continue to make use of this information in the future.

18. In a few instances, the Special Rapporteur also decided to address specific individual cases. During the reporting period, the Special Rapporteur sent three letters to the Government containing specific allegations of human rights violations committed by the Government of Iraq. On 3 April 2002, he addressed a letter regarding an American pilot who, according to some information, was still being held by the Iraqi authorities. On 11 April, the Government provided a reply to the

letter, stating that the Government, as it had stated previously, was willing to accept a United States team to investigate the matter (see annex VII).

19. On 8 May 2002, the Special Rapporteur addressed a letter to the Government regarding the situation of Ms. Safia Taleb Al Souhail, publisher of the newspaper *Al Manar Al Arabi* and Advocacy Director of the Arab and Islamic World at the International Alliance for Justice, who had allegedly received death threats from a messenger of the Government of Iraq during her stay in Jordan. The letter was also signed by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders. On 5 June, the Government provided a reply, stating that the allegation was untrue.

20. The third letter was addressed to the Government on 26 July 2002, regarding the situation of two individuals: Hamza Qassim Sabbat, also known as Abu Haitham, and Ibrahim 'Abd al-Jasim Mohammad, also known as Abu Ayub. According to the information received, both men were said to have appeared on Iraqi national television at the end of July and confessed their involvement in "terrorist acts" inside Iraq for the benefit of a foreign country. The letter stated that "it is feared that their confessions may have been extracted under duress and that televised statements may have an impact upon the fairness of their trial. The two men are also said to be at risk of being sentenced to death and executed". The letter was signed jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture. In the letter, the Special Rapporteur also reiterated his recommendation to the Government to implement a moratorium on executions. As the letter was submitted immediately prior to the submission of the present report, no response had been received. The Special Rapporteur hopes that a response will be received in due course, and he will report on it in his next report to the Commission.

21. With regard to the issue of Kuwaiti prisoners of war and persons unaccounted for since the time of the Iraqi occupation of Kuwait, the Special Rapporteur notes that there have been no positive developments during the reporting period. As previously stated, the Special Rapporteur urges the Government of Iraq to cooperate with the Tripartite Commission and the High-level Coordinator, Ambassador Yuli Vorontsov, pursuant to Security Council resolution 1284 (1999) of 17 December 1999.

22. With regard to missing Iraqis, and Iraqis missing as a result of expulsions that occurred in the 1980s, the Special Rapporteur equally regrets to report that there have been no positive developments on this issue.

23. The Special Rapporteur, while expressing regret that there have been no improvement in the situation, reiterates his willingness to assist in any way possible all parties concerned in their efforts to resolve this urgent humanitarian issue.

IV. Assessment of progress and planning of future visits

24. Although there has been progress in establishing a dialogue with the Government, the Special Rapporteur regrets to reiterate that this dialogue has remained at a far too general level. The Special Rapporteur hopes that the dialogue

will develop, reach a more substantive level and produce tangible improvements in the human rights situation in Iraq.

25. During the meeting on 28 June with the Permanent Representative of Iraq, the Special Rapporteur reiterated his wish to conduct another mission to Iraq, which would be more extensive than the previous one. He also pointed out that, in the future, it was his intention to focus on a range of civil, cultural, economic, social and political rights contained in the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights, to which Iraq is a State party. The Special Rapporteur intends to focus, inter alia, on matters such as freedom of expression, freedom of opinion, right to peaceful assembly and association, as well as the democratic rights contained in article 25 of the International Covenant on Civil and Political Rights.

26. The Special Rapporteur also stressed that he would hope to visit both the north and the south of the country. The Permanent Representative of Iraq informed the Special Rapporteur that, in principle, the Government had no objection to another visit, and requested the Special Rapporteur to submit a request in writing. The Special Rapporteur, who considers a new visit to be a sign of improved cooperation, welcomed this indication from the Government.

27. Subsequently, on 30 July, the Special Rapporteur wrote to the Government officially requesting a visit. The letter, inter alia, stated that:

> "This second mission would be more comprehensive and thorough than the previous exploratory one I conducted in February 2002, and as such would be of a longer duration. I would also expect that I would be accompanied by at least two staff members of the Office of the High Commissioner for Human Rights, as well as at least two United Nations interpreters. During the mission, I would wish to visit various areas both in the north as well as in the south of Iraq.
>
> "With regard to the dates of the mission, I would suggest some time between November 2002 and January 2003. If, for some reason, these suggested dates for the mission are inconvenient, I remain flexible, and would expect you to suggest other alternative dates.
>
> "The further details of the mission will naturally have to be agreed upon jointly. In this regard, I would thus very much appreciate, as the next step, receiving an initial reply to this request at your earliest convenience."

V. Humanitarian aspects

28. The Special Rapporteur continued to follow developments with regard to the humanitarian situation in Iraq. As he has previously noted, he believes that, in order to carry out his mandate, he needs to be fully apprised of anything that, directly or indirectly, intentionally or unintentionally, has adverse effects on the human rights situation in the country.

29. He has often joined the Secretary-General in expressing concern at the unintended human rights consequences of the international embargo against Iraq, including the number of applications placed on hold by the United Nations Security Council Committee. In this regard, he welcomes the adoption by the Security

Council of resolution 1409 (2002) of 14 May 2002, which is intended to reduce the number of orders placed on hold.

30. The Special Rapporteur takes note of a weekly update released on 30 July 2002 by the Office of the Iraq Programme in which, inter alia, it is stated that: "The first batch of 14 humanitarian supply contracts, worth over $7.62 million, that had been previously placed on hold by the Security Council's 661 sanctions committee, were approved last week following their reassessment in accordance with paragraph 18 of the new procedures for the review and processing of contracts under Security Council resolution 1409 (2002). [...] It is foreseen that with the end of this process, there will no longer be contracts on hold. There are now 2,141 contracts, worth over $5.39 billion, that had been placed on hold by the 661 committee, of which 1,480 contracts, valued at about $4.6 billion, are for humanitarian supplies and 661 contracts, worth $774 million, are for oil industry equipment." The Special Rapporteur hopes that these new measures will effectively eliminate the unintended impact on the humanitarian situation in Iraq.

VI. Conclusions and recommendations

31. The Special Rapporteur wishes to reiterate his conclusions and recommendations set out in previous reports and urges the Government to take action to implement his recommendations, and to inform the Special Rapporteur about the actions taken.

32. The Special Rapporteur welcomes the fact that a dialogue has been initiated with the Government of Iraq, and that the Government has responded in writing to some of his requests for information.

33. The Special Rapporteur urges the Government to provide detailed replies to outstanding requests for information and to reply to all letters concerning individual cases.

34. In particular, the Special Rapporteur urges the Government to provide all additional information requested regarding the right to life and the death penalty.

35. The Special Rapporteur reiterates his recommendation to the Government to implement a moratorium on executions, an issue to which the Special Rapporteur attaches considerable importance.

36. The Special Rapporteur urges the Government to reply urgently in writing to his request for another visit, and to proceed with the planning arrangements jointly with the Special Rapporteur.

37. The Special Rapporteur urges the Government to end all actions and policies that directly or indirectly affect or encourage religious intolerance, or any other sort of discrimination, including actions related to "Arabization".

38. The Special Rapporteur urges the Government to abolish the special courts, and ensure that the rule of law is respected everywhere and at all times in Iraq, in accordance with Iraq's freely undertaken obligation under international human rights instruments.

Annex I

Note verbale dated 16 April 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva regarding investigations carried out by the Ministry of the Interior into citizens' complaints of ill-treatment by the police authorities

The Permanent Mission of the Republic of Iraq to the European headquarters of the United Nations and other international organizations in Geneva presents its compliments to the High Commissioner for Human Rights and to the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, and has the honour to transmit to him herewith the following reply which is based on investigations carried out by the Ministry of the Interior into citizens' complaints of ill-treatment by the police authorities.

1. The provisions of the law apply to everyone without exception. The current Penal Code No. 111 of 1969 contains several articles concerning abuse of public office, including article 332, which designates as a criminal offence any act involving "any public employee or person charged with the performance of a public service who, in that capacity, uses force against another person in such manner as to damage that person's self-esteem or honour or to cause him physical pain, without prejudice to any more severe penalty which may be specified by the law".

2. In implementation of the foregoing, police officers are held legally accountable for any act of this kind which they may commit. The following are three examples of recent judicial applications of this principle:

(a) On 27 November 2001 the Baghdad Police Court handed down a two-month prison sentence against one police officer and a one-month sentence against another in application of article 332 of the Penal Code;

This criminal sentence was imposed following an investigation into complaints from two citizens who are brothers (Ahmad and Ra'id Samir Abdullah) that they were subjected to verbal and physical abuse while they were being held in custody on a charge of house burglary;

(b) On 23 December 2001 the Baghdad Police Court sentenced five policemen, three police officers and two ordinary police constables to six months in prison, in application of the same article of the Code. This criminal penalty was imposed following an investigation into a complaint from a citizen (Latif Idan Abd) that he had been ill-treated by the policemen while he was in custody on a charge of murder and this for the purpose of extracting a confession from him to the crime;

(c) On 16 January 2002 the Baghdad Police Court sentenced two ordinary police constables to one month in prison each, in accordance with the same article of the Code. The criminal sentence was imposed following an investigation into a complaint from a citizen (Ahmad Mohammed) that he had been ill-treated by the two police constables concerned when he intervened, in good faith, while they were arresting one of the accused persons.

It should be pointed out that these penalties also adversely affect the career prospects of the person punished, insofar as any penalty imposed, for example, upon a police officer will delay his promotion by a period of three months, in addition, naturally, to the penalty itself.

3. Moreover, the Ministry has taken several steps to speed up the process of transmission of citizens' complaints to Ministry officials and, in most cases, to the Minister himself. These steps include the following:

(a) Personal interviews between the Minister and the citizens;

(b) The presence in the Ministry of a department known as the Directorate of Citizens' Complaints, which is responsible for receiving citizens, listening to their complaints and submitting them to the Minister himself;

(c) In order to ensure that the views or complaints of citizens reach the Minister personally, the Ministry has provided a large number of boxes in which citizens can post their complaints. These boxes have been installed throughout the main post offices of Baghdad and the governorates and there are corresponding boxes for that same purpose in the various departments of the Ministry itself.

Annex II

Note verbale dated 17 April 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva on the issue of exploitation of agricultural land in northern Iraq

The Permanent Mission of the Republic of Iraq to the European headquarters of the United Nations and other international organizations in Geneva presents its compliments to the High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, and has the honour to submit hereunder the information pertaining to the exploitation of agricultural land in northern Iraq which the Special Rapporteur requested during his visit to Iraq. Its answers are as follows:

Exploitation of agricultural land in northern Iraq

The State is endeavouring to make the best possible use of land suitable for agriculture. Iraq has a growing need to optimize the utilization of such land, because of factors arising from its particular circumstances, of which the most important is the shortage of water provided to it by the Tigris and Euphrates Rivers, which originate in Turkey. In addition, the oppressive embargo imposed against the Iraqi people prevents by various means the import of inputs required for agricultural production, leaving large tracts of cultivable land without the resources required to guarantee a proper system of irrigation using water channels and industrial irrigation systems. Naturally, the State is working to encourage exploitation of cultivable land using water supplied by natural rainfall. Because of Iraq's climatic conditions, this type of land tends to be found throughout the governorates of the northern region.

The State distributes this land to all farmers willing to exploit it for agricultural purposes, without regard to their ethnic affiliation.

For the above reasons, and because of the urgent need to irrigate land that is not connected to the water supply, a total of approximately 1 million dunums[6] of land in the area of Dimiyah in the Ninawa governorate have been handed over to foreign companies for reclamation, in accordance with a memorandum of understanding (signed by the Ministry of Irrigation), and for the digging of hundreds of bore wells in the governorate of Al-Ta'mim.

[6] *Translator's note*: 1 dunum equals approximately 2,500 m^2.

Annex III

Note verbale dated 19 April 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva regarding the decree providing for a change of ethnicity

The Permanent Mission of the Republic of Iraq to the European headquarters of the United Nations and other international organizations in Geneva presents its compliments to the High Commissioner for Human Rights and to the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, and has the honour to transmit herewith the response to the request made by the Special Rapporteur during his visit to Iraq for information about the decree providing for a change of ethnicity.

Decree providing for a change of ethnicity

Because of the presence of cases left over from the records of the Ottoman period of rule, in which Iraqi citizens have been wrongly registered in popular censuses as being of non-Arab ethnicity, and in order to provide Iraqis with the right to choose their ethnicity, Revolution Command Council Decree No. 199 was promulgated on 6 September 2001 to provide every Iraqi who has reached the age of 18 with the right to apply to change his ethnicity to Arab ethnicity. It should be pointed out that this right is optional and not compulsory.

Annex IV

Note verbale dated 19 April 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva regarding choices of names for newborn infants

The Permanent Mission of the Republic of Iraq to the European headquarters of the United Nations and other international organizations in Geneva presents its compliments to the High Commissioner for Human Rights and to the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, and has the honour to transmit to the Special Rapporteur herewith its response to his request for information concerning the choice of names for newborn infants.

Choice of names for newborn infants

Some parents give their children foreign names that are alien to the heritage of Iraqi society, thereby forcing the bearer of the name to face the astonishment and persistent and embarrassing questions of those around them as to the meaning of their socially unusual names. For this reason, a decision has been taken that names must be either Iraqi, Arab or Islamic. It should be pointed out that the concept of Iraqi identity embraces the names of all religious and ethnic communities, including Kurdish, Turkoman, Christian and other names of other communities (the competent Iraqi authorities have already formed a committee to facilitate the application of the relevant Act).

Annex V

Note verbale dated 8 May 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva regarding the composition of the special courts and the review of the death penalty

The Permanent Mission of the Republic of Iraq to the European headquarters of the United Nations and other international organizations in Geneva presents its compliments to the High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, and has the honour to transmit herewith the response of the competent Iraqi authorities to the questions raised by the Special Rapporteur on the constitution of special courts and the review of the death penalty.

Text of the reply

1. Composition of special courts

Special courts are constituted by three ordinary court judges. The public prosecutor in such courts will also be one of the prosecutors who normally appears before the ordinary courts. The special courts apply the provisions of Penal Code No. 111 of 1969 and follow the procedures set forth in the Principles of Criminal Proceedings Code No. 23 of 1971, both of which are applied by the criminal courts in Iraq. Defendants in the special courts are guaranteed the right and freedom to present a defence, as a matter of course. In accordance with article 144 of the Principles of Criminal Proceedings Code, they have the right to appoint a lawyer or legal representative of their own choosing and are guaranteed the right to a trial conducted in accordance with due process. The verdicts that are handed down by special courts are reviewed by a special judicial committee, which acts as an appeal body. A special court is a type of specialized criminal court which, in all cases, is temporary in nature.

2. Review of the death penalty

In spite of the persistence of the exceptional circumstances in which Iraq finds itself as a result of the comprehensive embargo and daily acts of aggression against it by the United States of America and the United Kingdom of Great Britain and Northern Ireland, Saddam Hussein, the President of the Republic, has ordered that efforts should continue to review exceptional laws and decrees with a view to mitigating their effects. To that end, at a meeting of the Council of Ministers held on 29 October 2001, he issued orders that a review should be conducted of the death penalty, with a view to replacing it by penalties involving deprivation of liberty or appropriate financial penalties. A committee has been set up for that purpose, consisting of the Minister of Justice, the Minister of Labour and Social Affairs and the Minister of Religious Endowments and Religious Affairs. The committee intends to draft a report on the subject and submit it to the Council of Ministers for the adoption of appropriate recommendations in this regard. We shall notify the Special Rapporteur of the outcome of this report, as soon as the Council of Ministers reaches a decision.

Annex VI

Reply of the Government of Iraq to the requests for clarification of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq

A. Reforms carried out by the Ministry of Labour and Social Affairs in the prisons sector

The Public Agency for Social Reform Act No. 104 of 1981 guarantees the rights of prisoners and detainees sentenced by the competent authorities to deprivation of liberty, by providing for their behavioural, vocational and educational rehabilitation and making them aware of their rights and obligations, through the formulation of scientific plans that contribute to the elaboration of reform programmes enhancing the effectiveness of efforts to reform and reintegrate prisoners into society, in keeping with the humanitarian goals of the 17-30 July revolution of 1968.

The above-mentioned Act also guarantees the rights of prisoners to meet their relatives face to face, without any barriers between them. With regard to the large numbers of inmates in correctional facilities, it is necessary to recall a well-known fact, namely, that after the Glorious Revolution of July 1968 the Iraqi economy flourished and individual living standards improved. This engendered a fall in the crime rate and a decline in the numbers of offenders, which prompted the Government of Iraq to promulgate a decree closing down correctional facilities in a number of governorates and retaining only those located in the governorates of Baghdad, Ninawa, Basra, Babil and Diyala.

However, the exceptional circumstances which Iraq has endured since 1991, because of the aggression and ongoing imposition of the unjust economic embargo against it, have led to a fall in individual living standards and a rise in rates of crime and the numbers of offenders, with a corresponding increase in the size of the prison population. In spite of this, the number of prisoners as a proportion of the total population of Iraq currently stands at 0.13 per cent, a tiny percentage compared with other societies living in normal circumstances.

In order to continue to guarantee the rights of prisoners and detainees, to supply their accommodation, social and health requirements and to preserve their dignity, the Bureau of Adult Reform of the Ministry of Labour and Social Affairs has conducted studies and proposed solutions and remedies appropriate to their situation. The measures taken by the Government of the Republic of Iraq in this regard are outlined below.

1. A sum of 12.2 million Iraqi dinars has been earmarked for the construction of six prison blocks, four in the Abu Ghraib prison and two in the governorate of Babil prison, to accommodate 7,200 prisoners. The work has already begun.

2. The wing of the Khan Bani Sa'd prison reserved for prisoners serving minor sentences has been renovated at a total cost of 1,321,017,000 dinars, in order to accommodate 3,400 inmates. It is hoped that the work will be completed during the second half of 2002.

B. Reduction of penalties

The Government of the Republic of Iraq strives, for humanitarian reasons, to reintegrate prisoners into society after they have completed the numerous reform programmes that are run in prisons for the purpose of giving prisoners a second chance to be useful members of society and to lead a normal life. This is achieved through the following measures:

1. Revolution Command Council Decree No. 20 of 2000 replaces one half of the sentence with a fine. In 2001, a total of 876 prisoners benefited from the terms of the Decree, while the corresponding figure for the period from the beginning of 2002 to 6 May 2002 was 893. The Decree remains in force.

2. Religious campaign programmes provide for a 10 per cent reduction in the sentences served by participating prisoners. In 2001 1,681 prisoners benefited from religious studies course No. 13, while 1,740 prisoners benefited from course No. 14 of 2002 and 575 from course No. 16 of 2002. It is worth pointing out that these programmes consist of lectures for the prisoners on the texts of the Holy Koran and the magnanimous Islamic Shariah, which call for the shunning of crime and compliance with exemplary

morals and declare it unlawful for one human being to kill another, and on the illustrious biography of the Prophet.

3. Revolution Command Council Decree No. 107 of 26 April 2001 (a copy of which is attached) reinstates the provisions of the Penal Code No. 111 of 1969 governing fines and substitutionary fines for infractions and misdemeanours punishable by a term of no more than three years' imprisonment.

4. Revolution Command Council Decree No. 108 of 26 April 2001 (a copy of which is attached) provides for a 50 per cent reduction of prison sentences handed down against prisoners and detainees on or before the date of the entry into effect of the Decree. The period of conditional release to which a person covered by the provisions of the Decree is legally entitled is calculated on the basis of the term remaining after the sentence has been reduced by the aforementioned percentage. Between 27 April 2001 and 7 May 2002, a total of 4,235 prisoners benefited from this Decree.

C. Commutation of death sentences

(a) Revolution Command Council Decree No. 106 of 26 April 2001 (a copy of which is attached) provides for the replacement of death sentences imposed on persons found guilty of robbery under the provisions of Revolution Command Council Decree No. 59 of 4 June 1994 with a term of imprisonment, which begins on the date on which the person is taken into custody. Forty-six prisoners benefited from this Decree in 2001 and 17 in 2002.

(b) Death sentences have been commuted to life imprisonment under the terms of presidential decrees, from which eight prisoners benefited in 2001 and two in 2002.

(c) Death sentences have been commuted under the terms of discretionary decrees, from which four prisoners benefited in 2001 and seven in 2002.

D. Death sentences carried out over the past two years (2000 and 2001)

The numbers of persons against whom death sentences were carried out during 2000 and 2001 were as follows:

(a) 2000

One hundred and six prisoners were executed for the crimes of homicide and homicide accompanied by robbery. Forty prisoners were executed for drug-related offences and 11 for immoral offences (rape of a close female blood relative).

(b) 2001

Sixty-three prisoners were executed for homicide and homicide accompanied by robbery. Forty prisoners were executed for drug-related offences and three for immoral offences (rape of a close female blood relative). Thus, in 2000 and 2001 a total of 259 persons were condemned to death for the offences of homicide, homicide accompanied by robbery, drug-related offences and immoral offences (rape of a close female blood relative).

With regard to the ministerial committee responsible for making recommendations concerning the mitigation of crimes punishable by death, the committee continues to review this subject and we shall inform you of its decision in due course.

E. Special courts

A special court is comprised of three ordinary court judges. The public prosecutor in this type of court also works in the ordinary courts. Special courts apply the provisions of the current Penal Code No. 111 of 1969 and the criminal procedures set forth in the Code of Criminal Proceedings No. 23 of 1971, both Codes being those that are applied in Iraq's criminal courts. Special courts guarantee, as a matter of course, the right freely to present a defence. Under article 144 of the Code of Criminal Proceedings, the person on trial must be afforded the services of a lawyer of his own choosing or one that has been appointed for him, throughout all proceedings and at all stages of a special court hearing. Judgements handed down by the special courts are scrutinized by a special judicial authority acting as an appeal body. Special courts are on the same level as specialized criminal courts and, in all cases, are of a temporary nature.

Enclosure I

Revolution Command Council Decree
Decree No. 106

Date: 3 Safar A.H. 1322
26 April A.D. 2001

Pursuant to the provisions of paragraph (a) of article 42 of the Constitution,

The Revolution Command Council has decreed as follows:

1. Revolution Command Council Decree No. 59 of 4 June 1994 is hereby revoked.

2. The penalty applicable to persons found guilty of robbery under the terms of the revoked Decree mentioned in paragraph 1 of the present Decree shall be replaced by the maximum term of imprisonment established by the provisions of the penal laws in force, the enforcement of the penalty of imprisonment being calculated from the date on which the offender is taken into custody.

3. This Decree shall enter into force on the date on which it is promulgated.

Saddam Hussein
President of the Revolution Command Council

The Iraqi Official Gazette No. 3877, 7 May 2001

Enclosure II

Revolution Command Council Decree
Decree No. 107

Date: 3 Safar A.H. 1322
26 April A.D. 2001

Pursuant to the provisions of paragraph (a) of article 42 of the Constitution,

The Revolution Command Council has decreed as follows:

1. Under the terms of the present Decree the provisions are hereby reinstated of the Penal Code No. 111 of 1969 and of other special laws concerned with the penalty of a fine or a substitutionary fine for infractions and misdemeanours punishable by a term of no more than 3 (three) years' imprisonment, which were revoked by Revolution Command Council Decrees No. 30 of 17 March 1995 and No. 5 of 17 January 1998.

2. The provisions of paragraph 1 of this Decree shall not apply to:

(a) Offences against a person's honour such as are designated by law;

(b) The offences specified in articles 236, 245, 247, 267, 272, 279, 327, 332, 352 and 461 of the Penal Code.

3. The amounts of the fines for the offences mentioned in paragraph 1 of the present Decree shall be as follows:

(a) No less than 10,000 (ten thousand) and no more than 50,000 (fifty thousand) dinars for infractions;

(b) No less than 51,000 (fifty-one thousand) and no more than 250,000 (two hundred and fifty thousand) dinars for misdemeanours.

4. In the event of failure to pay the fine provided for under this Decree, the court shall sentence the offender to serve one day in prison for every 500 (five hundred) dinars of the fine imposed. However, the term of imprisonment must not exceed one and a half years and the period of remand in custody must be deducted in the same proportion when the fine is paid.

5. Revolution Command Council Decrees No. 30 of 17 March 1994 and No. 5 of 17 January 1998 are hereby revoked.

6. This Decree shall enter into effect on the date on which it is published in the Official Gazette.

Saddam Hussein
President of the Revolution Command Council

The Iraqi Official Gazette No. 3877, 7 May 2001

Enclosure III

Revolution Command Council Decree
Decree No. 108

Date: 3 Safar A.H. 1322
26 April A.D. 2001

Pursuant to the provisions of paragraph (a) of article 42 of the Constitution,

The Revolution Command Council has decreed as follows:

1. Prison sentences handed down against prisoners and detainees on or before the date of the entry into effect of the present Decree shall be reduced by 50 (fifty) per cent.

2. The provisions of paragraph 1 of this Decree shall not apply to:

(a) Prisoners and detainees found guilty of the following offences:

(i) Offences against the internal and external security of the State;

(ii) The offences of robbery specified in articles 441, 442, 443 and 444 of the Penal Code and crimes involving robbery accompanied by homicide;

(iii) The offences of sodomy, rape and unlawful intercourse with a close female blood relative or matchmaker.

3. The period of conditional release to which a person covered by the provisions of this Decree is legally entitled shall be calculated on the basis of the term of the sentence that remains after it has been reduced by the percentage specified in paragraph 1 hereof.

4. This Decree shall enter into effect on the date on which it is promulgated.

Saddam Hussein
President of the Revolution Command Council

The Iraqi Official Gazette No. 3877, 7 May 2001

Annex VII

Note verbale dated 11 April 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva

The Permanent Mission of the Republic of Iraq to the European headquarters of the United Nations and other international organizations in Geneva presents its compliments to the High Commissioner for Human Rights and to the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, and with reference to his letter dated 3 April 2002, has the honour to transmit to him herewith the following reply:

1. On 24 March 2002 the Ministry of Foreign Affairs of the Republic of Iraq issued a statement (a copy of which is attached), on the subject of the United States pilot refuting the claims made by the United States of America and expressing Iraq's willingness to receive a United States team to visit Iraq, under the auspices of the International Committee of the Red Cross (ICRC), accompanied by a United States media team and by Mr. Scott Ritter, the former head of inspection team UNSCOM-24, who conducted an inspection of the crash site of the aircraft in question.

2. The reactions of the United States to the Iraqi initiative have been guarded and sceptical. Vice-President Dick Cheney said he must first examine whether the Iraqi initiative was a serious proposition or whether Iraq was trying to create a distraction.

3. In response to the United States comments, the Ministry of Foreign Affairs issued a second statement on 27 March 2002 (a copy of which is attached) confirming the seriousness of the Iraqi proposal to receive a United States delegation to investigate the fate of the pilot in question.

4. The Ministry of Foreign Affairs of the Republic of Iraq sent official notes to the ICRC delegation and the United States Interest Section (the Polish embassy) in Baghdad, reaffirming Iraq's willingness to receive a United States delegation to investigate the matter.

5. At the end of last month we asked the ICRC representative to convey a message to the United States side indicating Iraq's willingness to receive a United States delegation to investigate the fate of the aforementioned pilot. The Government of Iraq has yet to receive a response from the United States side.

Enclosure I

Statement

On 11 March 2002, a spokesman for the United States Department of State told the press that his Government had raised the subject of the pilot Michael Speicher with the Iraqi Government in January 2001 and that it considered him to be missing, rather than killed in action. The head of the United States delegation also raised this subject at the most recent meeting of the Tripartite Commission held at Geneva on 8 March 2002, and the President of the United States, George Bush himself mentioned it at a press conference on 13 March of this year.

The spokesman for the [Iraqi] Ministry of Foreign Affairs has made the following statement in this regard:

> "The case of the United States pilot Michael Speicher goes back to the first day of the war launched by the United States of America against Iraq on 17 January 1991, when the pilot's aircraft was brought down in the western region of the country. Since then, the United States administration's handling of the Speicher case has been riddled with inconsistencies. On the evening of the incident, Dick Cheney, who was the Secretary of Defense at the time and is now the United States Vice-President, told journalists that Speicher had died when his aircraft crashed. In May 1991, there being no evidence to suggest that Speicher had survived the incident, the United States Navy approved a report declaring him dead. At the same time, United States television networks quoted sources in the United States Navy who said that the pilot of the plane that was flying with Speicher's had seen his plane explode in the air and crash to the ground, that he had not seen Speicher jump from his aircraft nor had he sent out any distress calls."

The spokesman added:

> "Between 1991 and February 1995 the United States administration made no attempt to investigate the fate of its pilot or to raise the subject with the ICRC or at the meetings of the Tripartite Commission on the subject of missing persons. In 1995, when the administration asked for cooperation to determine what had happened to the pilot and for evidence of his death, Iraq agreed, on purely humanitarian grounds, to receive a United States delegation for that purpose. In fact, a United States technical team of 11 persons came to Iraq on 9 December 1995 and, after visiting the crash site, confirmed that apart from the effects of the weather and of the actions of shepherds passing through the region, the wreckage of the plane had remained largely intact.
>
> "Between 17 and 19 December 1991 an inspection team (UNSCOM-24) of the former United Nations Special Commission examined the crash site in the western region of Iraq, a fact which Iraq only learned subsequently. The head of the team, Scott Ritter, admitted that the United States administration had asked him to search for the body of a United States pilot and that he had concluded, after a technical investigation, that the remains had been devoured by wolves. In 1993, the inspection team UNSCOM-63 again conducted its own inspection of the area using helicopters fitted with sophisticated radar equipment, but it found nothing except the wreckage of the plane."

The spokesman added:

> "On 12 January 2001, United States President Bill Clinton raised the subject of Speicher and announced the reclassification of the pilot's status from killed to missing in action. The United States authorities presented an investigation file on Speicher, but the ICRC refused to accept it, because the deadline for the submission of investigation applications had expired on 31 July 1996. The Committee asked the United States to submit the application on the basis of a bilateral investigation under the auspices of the ICRC between the two States concerned. In fact, on 11 May 2001 Iraq received a bilateral investigation file from the United States administration via the ICRC and on 23 September 2001 the Ministry of Foreign Affairs submitted its reply to the ICRC providing all the information and evidence at its disposal. This information was essentially drawn from the information available to the United States authorities, confirming that Commander Speicher had died in the incident and identifying the location in which it had occurred. Indeed, the United States authorities had not asked for his name to be included on the 1991 lists of prisoners of war, nor had he been registered as a missing person. The Iraqi authorities are unable to add anything to the conclusions reached by the United States team during its 1995 visit to Iraq."

The spokesman for the Ministry of Foreign Affairs concluded his statement by saying:

> "In order to demonstrate our goodwill in this matter and to refute the repeated allegations made by the United States of America against Iraq, we affirm the willingness of the Iraqi authorities concerned to receive a United States team to visit Iraq and investigate the matter, to be accompanied by a United States media team to provide coverage and document [the visit], under the auspices of the ICRC and with the participation of Mr. Scott Ritter, the former head of the inspection team UNSCOM-24, who inspected the crash site in 1991."

In placing these facts before international public opinion, Iraq calls upon the United States administration to desist from its policy of misinformation and misrepresentation which it pursues from time to time against one party and another, and it reaffirms that the best means of resolving matters of a purely technical nature is through the relevant legal channels.

Enclosure II

Statement of the spokesman for the Ministry of Foreign Affairs

In response to the statements made by the United States Vice-President Dick Cheney, in which he expressed doubts as to the seriousness of the offer made by the Government of the Republic of Iraq to receive a United States team to investigate the case of the pilot, Michael Speicher, whose aircraft was brought down over Iraqi territory on 17 January 1991, the spokesman for the Ministry of Foreign Affairs has made the following statement:

> "The United States administration knows better than anyone that when Iraq says something it means it. When Iraq put forward a proposal offering to receive a United States delegation in order to investigate the fate of the pilot, Speicher, it did not do so in order to gain media attention. Indeed, on 26 March 2002, the Ministry of Foreign Affairs formally notified the head of the delegation of the International Committee of the Red Cross in Baghdad of its willingness to take the necessary steps to implement this initiative. As for the wish expressed in his statement of 25 March 2002 by the spokesman of the United States Department of State that the Tripartite Commission should review the case of the United States pilot, the Commission, regardless of Iraq's opinion of its current composition, refused to accept the pilot's case file when the United States delegation offered it at the end of 1999, because the deadline for the submission of investigation applications to the Commission had expired on 31 July 1996. The Commission urged the United States of America to submit the application on the basis of a bilateral investigation under the auspices of the International Committee of the Red Cross between the two States concerned (Iraq and the United States of America). The United States has yet to submit such an application."

The spokesman for the Ministry of Foreign Affairs concluded his statement by saying:

> "If the United States of America is serious about ascertaining the fate of the United States pilot after having ignored his case for several years, it need only notify the International Committee of the Red Cross of its acceptance of Iraq's proposal."

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Fifty-seventh session
Item 111 (c) of the provisional agenda*
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Sudan

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan, Gerhart Baum, pursuant to resolution 2002/16 of 19 April 2002 of the Commission on Human Rights and Economic and Social Council decision 2002/250 of 25 July 2002.

* A/57/150.

** The present report is being submitted on 20 August 2002 so as to include as much updated information as possible.

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Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan

Summary

The Special Rapporteur, while welcoming the Machakos Protocol, highlights the need for human rights to be put at the centre of the talks.

In view of the links between peace and democracy and human rights, peace talks should be more comprehensive and include all stakeholders in what is not simply a North-South conflict. Confidence-building and reconciliation need democracy.

Overall, the situation of human rights has not improved. Civil society structures need to be strengthened.

Implementation of the peace agreement is key: international monitoring is necessary.

The United Nations should play a stronger role, particularly in the post-conflict scenario, both in monitoring implementation of peace and strengthening the civil society.

In this connection, the Special Rapporteur welcomes the technical cooperation programme undertaken by the Office of the United Nations High Commissioner for Human Rights and will monitor its impact on the ground.

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I. Introduction

1. Following his October 2001 mission to the Sudan and Kenya and the presentation of his report to the General Assembly (see A/56/336), the Special Rapporteur travelled to the region in February-March 2002 to collect updated information for the presentation of his report to the Commission on Human Rights at its fifty-eighth session.

2. From 26 through 28 February 2002, the Special Rapporteur visited Cairo, where he met with some Egyptian authorities, including representatives from the Ministry for Foreign Affairs and Presidential Adviser, Osama el-Baz. He also met with the Secretary-General of the League of Arab States, Amr Musa, as well as with members of Sudanese opposition parties (Sudanese Democratic Unionist Party (DUP); Union of Sudanese African Parties (USAP), non-governmental organizations (NGOs), Sudanese Victims of Torture Group (SVTG)) and representatives of the Massaliet minority, who briefed him about the situation in Darfur.

3. From 1 through 5 March 2002, the Special Rapporteur visited Khartoum, where he met with the First Vice-President, the Presidential Adviser on peace, the Ministers of Justice, Defence, Energy and Mining, Information and Communication, Guidance and Endowment, the State Minister for Foreign Affairs and the Head of the Human Rights Committee in the National Assembly, as well as the Rapporteur of the Advisory Council for Human Rights. He also met with different segments of the civil society, including representatives of the political opposition, domestic NGOs, the press and the churches, and held consultations with the United Nations Resident Coordinator and heads of United Nations agencies, representatives of the donors, diplomatic and consular missions and international NGOs.

4. In Nairobi, the Special Rapporteur met with representatives of the Sudan People's Democratic Front/Sudan People's Defence Forces (SPDF), Operation Lifeline Sudan (OLS) and non-OLS organizations, representatives of some key donor countries as well as the Kenyan Presidential Envoy for the Intergovernmental Authority for Development (IGAD), Lazaro Sumbeiywo.

5. During his visit, the Special Rapporteur noted with appreciation that a number of steps had been taken which may lead to an improvement of the human rights situation in the Sudan. He has continued to follow the situation on the ground to see how it is being developed in the long run and took note of the commitments that the Government made to the European Union in the framework of their ongoing dialogue.

6. New elements focused on the building up and/or strengthening of institutions, i.e. the new Committee for the Eradication of Abduction of Women and Children (CEAWC) structure, discussions relating to the creation of a national human rights institution, the training activities organized by Office of the United Nations High Commissioner for Human Rights within its technical cooperation programme and, in rebel-held southern Sudan, the initial steps taken towards the strengthening of the civil society.

7. The Special Rapporteur took note of the United States-led initiative and the report on the outlook for peace in the Sudan by the Special Envoy for Peace, Senator Danforth, as well as the different reactions it generated within the Sudanese and the broader international arena.

8. The present report includes the findings of the mission as well as an updating on the overall situation based on information collected since then.

9. The Special Rapporteur will conduct his fourth visit during the fall of 2002, tentatively. His findings will be reflected in his oral presentation to the General Assembly and will be the basis of his next report to the Commission on Human Rights.

II. Respect for human rights and humanitarian law in the conflict

A. The peace talks

10. In view of the link between a sustainable peace and human rights, the Special Rapporteur followed with interest the latest developments within the IGAD-led peace talks. He welcomes the positive outcome of the first round of talks which started in Machakos, Kenya, on 17 June 2002, on the practical implementation of the formula "two systems — one State" and the signing, on 20 July 2002, of the Machakos Protocol on the two issues of self-determination and religion and State, so far the stumbling blocks in the peace negotiations. He

acknowledges the more vigorous approach of the IGAD mediator and the decisive role of Norway, the United States and the United Kingdom. Particular thanks go to the United States administration for backing all initiatives by Senator Danforth and his team.

11. The Special Rapporteur looks forward to the outcome of the following round of talks, which started on 12 August 2002. While appreciating the recent positive developments, he noted that some observers appear sceptical regarding the actual chances for peace, in view of the escalation of military activities, the hardening of the parties' positions, lack of progress on tackling the root-causes of the conflict and the fact that the focus has remained on humanitarian issues only, without evolving into a more comprehensive approach, which is why potential external leverage is slowly eroding.

12. Moreover, the Special Rapporteur noted with concern that involvement of the civil society remains limited for the time being and expresses the hope that more comprehensive discussions will be held. In this connection, the actual implementation of the peace agreement and its monitoring remain key.

13. The Special Rapporteur noted that the New Sudan Council of Churches issued a statement in which it declared: "We encourage the peace process to be inclusive and employ conflict resolution strategies so that people are empowered to join in the peace and rebuild their lives and communities".[1]

14. The Special Rapporteur noted with interest the strategy on widening participation in the IGAD process, as reflected in the International Crisis Group report entitled "Dialogue or Destruction? Organizing for Peace as the War in Sudan Escalates",[2] which foresees a number of actors, notably the negotiating circle (the Government of the Sudan and the Sudan People's Liberation Movement and Liberation Army (SPLM/A), the IGAD Special Envoy, Eritrea, Ethiopia and Uganda); an observer circle (Norway, the United States and the United Kingdom); an external leverage circle (Egypt and others; possibly the United Nations and the African Union); a Sudanese consultation circle (National Democratic Alliance (NDA), Umma Party and civil society); and the "Track II consultation circle" (the Max Planck Institute, the World Bank Nile Basin Initiative and the African Renaissance Institute).

B. Intensification of military activities

15. Since his mission, the Special Rapporteur has continued to receive information pointing to the perpetration by all parties to the conflict of numerous serious violations of human rights and international humanitarian law, of which innocent civilians continue to be the principal target. As the conflict entered its nineteenth year, indiscriminate bombing of civilians has continued unabated, including at night, thus severely hampering access to humanitarian aid.

16. While the Government pursued its strategy in western Upper Nile, Bahr al-Ghazal and Southern Blue Nile, SPLM/A continued to focus on the oil areas, where oil infrastructure and assets continued to be considered legitimate military targets.

Aerial bombing

17. Sources agree that, as a result of the intensification of military activities, the number of casualties has risen. On 18 April 2002, the International Committee of the Red Cross (ICRC) News 16 reported that the ICRC Lopiding hospital in Lokichokio, Kenya, received an unprecedented influx of patients, bringing the total number to more than 680 for the first time in its history, following an upsurge in fighting in southern Sudan — especially in western Upper Nile in early April.

18. On 22 May 2002, at 2 a.m., an Antonov reportedly dropped 16 bombs in an area between Mayam and Manken. Fifteen people were reportedly killed, 35 seriously wounded, mostly 10- and 11-year-old boys.

19. On the same day, at 8.30 a.m., an Antonov bomber reportedly dropped 16 bombs on Rier, Mankien county, south of Bentiu, near the oil road of concession block 5A in western Upper Nile, killing 11 people and wounding 95, of whom 35 were reported to be serious cases whose legs and arms had been blown off.[3] It should be noted that Rier is a relief centre for displaced people. Neither OLS nor ICRC had been granted access to the area at that time.

20. Lil, a few miles from Touc in western Upper Nile, was also reported bombed on the same day. A lot of casualties among civilians were reported as well as 18 deaths.

21. On 11 June 2002, Madier, in western Upper Nile, was reportedly bombed. Twenty-four persons were reported as having been killed or to have died of wounds. The village of Rienydar, in western Upper Nile, was also reported to have been bombed on 10 June 2002.

22. On 20 June 2002, OLS South was informed that the Government had denied any intervention by OLS South into western Upper Nile.

23. On 23 June 2002, six bombs were reportedly dropped in Malual Kon, Bahr al-Ghazal, at about 20 metres from the local International Rescue Committee compound. Four civilians were reported as having been killed, including a blind old man and two teenage girls, and another five to eight injured. The village, which is located far from the frontlines, hosts a community of 4,000 and is a well-established centre for humanitarian operations.

24. On the same day, an Antonov attack was reported in Bac, near Warawar, Bahr al-Ghazal, which caused the deaths of three women.

25. On 25 June 2002, four bombs reportedly struck the residence of Bishop Johnson Akio Mutek, the auxiliary bishop of Torit diocese, in Ikotos, eastern Equatoria, injuring an unconfirmed number of people. The bishop's home and the adjacent St. Joseph youth centre were reportedly destroyed in the air raid.

26. On 28 June 2002, Atar, Upper Nile, was reported shelled. Several bombs were reportedly dropped. Three children were reported having been killed and three other people having been seriously injured.

Internally displaced persons

27. The Special Rapporteur was informed that between 150,000 and 300,000 people have reportedly been displaced in western Upper Nile alone since the beginning of 2002. While it is difficult to provide exact references to damage incurred, information points to the destruction of some 40 villages destroyed in western and northern Upper Nile by the Government from January to April 2002 and one village, Tuhubak, 50 kilometres east of Torit, burned down by SPLM/A in eastern Equatoria on 13 March 2002, which led to the deaths of 24 civilians.

Access

28. Denial of access has continued to be used by both the Government and SPLM/A, thus hampering the delivery of humanitarian aid to the most needy areas. A number of locations in Upper Nile, Bahr al-Ghazal and Equatoria have continued to be banned by the Government, some for years. Wau, Bahr al-Ghazal, has been banned by SPLM/A since April 2002.

29. In April 2002, the United Nations condemned access denial to 43 locations, expressed concern about the use of flight bans and called upon both parties to the conflict for full access to all locations. In May 2002, following a flight ban for Unity state, encompassing western Upper Nile, nine major aid agencies working in the Sudan reiterated the same concerns.

30. On 29 May 2002, the Government agreed to resume aid flows into western Upper Nile provided that relief flights pass through El Obeid, northern Kordofan. The Special Rapporteur expresses his concern about any attempt to amend the terms of the current tripartite agreement and warns against the setting of precedents to that end.

31. The issue of access was personally brought up by the Secretary-General on the occasion of his visit to Khartoum, on 10 and 11 July 2002.

Landmines

32. The Special Rapporteur continued to receive information confirming that both parties resorted to the use of landmines. He noted that the Sudan has signed, but not yet ratified, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

33. Information received also points to the continuation of forced conscription practices by both parties. Allegedly, the Government has forcibly conscripted young civilians as well.

C. The oil issue

34. The Special Rapporteur repeatedly discussed the issue of oil exploitation with representatives of the Government, Swedish Lundin Oil[4] and Canadian Talisman. Further consultations are envisaged with the other oil companies. Details of his visit to the oil fields

in October 2001 were reflected in his report to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/46).

35. Following interviews with internally displaced persons in northern and southern Sudan, the Special Rapporteur has continued to receive alarming information pointing to the continuation of grave human rights abuses linked to oil exploitation, aimed at depopulating oil-rich areas to ensure their control.

36. The ceasefire in the Nuba Mountains has reportedly allowed for redeployment of troops in oil rich Unity state, thus leading to an intensification of war-related activities.

37. Civilians have continued to be specifically targeted, from October 2001 to early 2002 (in the south-eastern part of Ruweng county, in oil-concession blocks 1 and 2 and in the northern part of block 5A in western Upper Nile). Proxy militias are allegedly instructed systematically to kill and displace civilians.[5]

38. Sources point to an estimated 80,000 people from Ruweng county and some additional 50,000 from western Upper Nile being displaced and at serious risk of food shortages.

39. The Special Rapporteur was shocked to read witnesses' accounts of scorched earth tactics used by air and ground forces to clear oil-rich areas, chase people out of their villages and ensure that they would not return, including by planting anti-personnel landmines around watering points and along pathways to areas where wild food is available and in emptied villages.

40. In addition, the Special Rapporteur was informed that oil revenues have determined an increase in military expenditures,[6] which have reportedly more than doubled, thus allowing for the purchase of new, more sophisticated and better performing war equipment.

41. The Special Rapporteur reiterates his concern about the ongoing situation in Unity state, particularly about the plight of civilians, in view of the recent escalation of war-related activities and brutalities reported.

D. Abductions

42. During his last visit, the Special Rapporteur was informed that, in an attempt to strengthen the Committee for the Eradication of Abduction of Women and Children, the President of the Republic had moved the Committee directly under his supervision, while providing it with full-time chairmanship and appropriate resources.[7]

43. The Special Rapporteur was fully briefed about the new CEAWC methodology of work and its more participatory approach, aimed at enabling the Committee to accomplish its mandate in the one-year time frame set to deliver concrete results.[8]

44. In his speech to the Commission on Human Rights, the Special Rapporteur welcomed Senator Danforth's initiative aimed at investigating, on the ground, means for preventing abductions. Following its mission, the Eminent Persons Group issued a report on 22 May 2002.

45. The Special Rapporteur noted that the Group concluded that the Government of the Sudan and its predecessors have been responsible for arming murahaleen groups, for using them as auxiliary military forces and for allowing members of such forces to enjoy impunity for a wide range of serious crimes committed in the course of attacks. The Group concluded that in a significant number of cases, abduction is the first stage in a pattern of abuse that falls under the definition of slavery in the International Slavery Convention of 1926 and the Supplementary Convention of 1956. The Group was unable, however, to establish the scale of abduction and enslavement. Responsibility for the lack of reliable information on this subject lies with the Government and the SPLA, both of which have obstructed the necessary research by independent investigators.[9]

46. The Special Rapporteur noted in particular the reference to the link between abduction and governance, in terms of absence of democratic institutions and practices both in areas controlled by the Government and in those controlled by the SPLM/A and other armed groups and narrow space allowed for democratic processes and the development of civil society organizations.[10]

47. The Special Rapporteur noted the position of the Government, as formulated in the letter dated 15 April

2002 from the Adviser to the President on Peace Affairs to the Chair of the Eminent Persons Group.

48. On 15 May 2002, the Special Rapporteur received a press release from the Permanent Mission of the Sudan, regarding the involvement of President Omer al-Bashir in CEAWC activities. According to information received, "to show his personal commitment to the eradication of intertribal abduction", the President and high officials attended a CEAWC meeting, in which he "emphasized the importance that the Government bestows on the Committee [and] called for the enhancement of tolerance and coexistence among Sudan's diverse people".[11]

49. Finally, the Special Rapporteur noted that within the framework of the European Union-Sudan dialogue, the Government committed itself to fighting abductions through (a) making a substantial financial contribution to CEAWC and (b) supporting CEAWC with more resources and staff. He regrets that, reportedly, contributions made available so far are not sufficient to enable CEAWC to fulfil its mandate.

50. On the commitment made to the United Nations Children's Fund (UNICEF) to grant flight authorizations whenever the flight is used to return abductees to their families, the Special Rapporteur noted that two flights were granted clearance by the Government. As a result, 33 individuals have been able to return to their families in SPLM/A-controlled areas.

51. No steps have reportedly been taken on the prosecution of any person found guilty of new abductions.

52. No specific policy has reportedly been put in place aimed at discouraging murahalleen from practising abductions.

53. The Special Rapporteur regretted information received relating to an alleged case of abduction in Bahr al-Ghazal on 26 May 2002, whereby elements of the Popular Defence Forces (PDF), believed to have originated from Rumaker, attacked and raided villages in Malual East of Aweil North and Mariam and Gumjuer payams in Aweil West. Twenty-three people were reportedly killed in Mariam and Gumjuer, 5 in Malual East and 12 children and women were reportedly abducted in the course of the attack. Raiders reportedly burnt down 67 homesteads in 7 villages attacked, notably Makuac-chimel, Rol-ngol, Awet-gumjuer, Madhol-gumjuer, Wut-liet, Gok-ajokdit and Mabil.

E. SPLM/A

54. The Special Rapporteur noted that information regarding the situation of human rights in rebel-held areas is scarce. While this does not exclude the occurrence of human rights violations in those areas, it explains why details on individual cases are not reflected in the present report. However, the Special Rapporteur continued to inquire about the situation of human rights in SPLM/A-controlled areas, particularly while on mission.

55. While in Nairobi, he was informed that SPLM/A-held areas continue to be administered by the military[12] in spite of some slow developments in the building up of civil society structures.

56. Elections, which had been repeatedly announced and postponed, have not yet taken place. The Special Rapporteur was informed that they would be further postponed, owing to the January merger between SPLM/A and SPDF.

57. As for the use of child soldiers, the Special Rapporteur received an update on the demobilization programme conducted by UNICEF. Training and awareness-raising remain important to prevent further recruitment from taking place.

58. Moreover, the need for effective monitoring of the process was underscored, in conjunction with the development of a stronger sense of ownership by SPLM/A, now that all excuses for inaction have been removed.

III. Transition to democracy

59. In his report (E/CN.4/2002/46), the Special Rapporteur had highlighted issues of concern, such as the continuation of the state of emergency, which has provided the legal basis for the establishment of Special Courts in Darfur; the role of the security forces; the transition to democracy; the curtailment of freedom of expression; the suppression of political freedoms; the plight of the internally displaced persons; and religious discrimination.

60. On the commitments made by the Government within the European Union-Sudan dialogue, the Special Rapporteur noted the following.

61. On freedom of the press, he regrets that, in spite of the decision to lift censorship in December 2001, harassment and intimidation of journalists continued in different forms. Journalists are sometimes summoned by security agents, who instruct them about what and how to report. Alternatively, they are reportedly provided with pre-made texts which they are requested to publish. Financial burdens, particularly fines, are imposed upon newspapers, which often threaten their existence. The National Press Council did not appear to play any significant role so far.

62. On freedom of religion and the establishment of an Advisory Council for Christians, during his mission, the Special Rapporteur met with the Minister of Guidance and Endowment, who informed him that a dialogue had started with the churches to this end. However, in June 2002, the Sudan Council of Churches declared that it had not been informed of the scope of the mandate of such a body. Overall, freedom of religion does not yet appear to be fully guaranteed.

63. On democratization, cooperation with other parties and inclusion of opposition in the Government at all levels, the Special Rapporteur appreciated that opposition parties are still not allowed to operate in a free environment and face obstacles in the running of political activities. Sources pointed to the fact that even registered political parties are not allowed to work. Opposition members, particularly from the Popular National Congress (PNC) and the Communist Party, continued to be detained on political grounds. PNC leader, Hassan al-Turabi, continued to be detained under house arrest, without any legal basis, according to his lawyers.

64. As for the implementation of a programme of civic education in democracy, no indications were received on the implementation of such a programme on behalf of the Government.

65. Security forces continued to operate above the law; all the cases received are characterized by infringements of civil liberties by security agents, who seem to continue to enjoy a high degree of impunity.

66. Regarding the amendment to limiting the National Security Forces Act to the purpose of fighting against terrorism, the Special Rapporteur noted that the Act continued to be used in connection with arrests and detentions of government opponents.[13] Accordingly, the Act appears to be having a negative impact on the human rights situation.[14]

67. In addition, amendments were introduced on 22 January 2002 by presidential provisional order to the Criminal Procedure Act of 1991, which strengthen the powers of law enforcement agents in matters relating to, inter alia, investigation, arrest, interrogation and detention, without judicial review. NGOs expressed concern about the risk that such an amendment may give police officers a power comparable with the one enjoyed by security officers. The decree was endorsed by the National Assembly in June 2002. The Special Rapporteur remains concerned about its potential implications, which need to be monitored, particularly as impunity is an issue that has not yet been tackled in a satisfactory manner.

68. Regarding ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and accession to the Convention on the Elimination of Discrimination against Women, the Special Rapporteur noted that no progress has been achieved in spite of the reassurances that he had received to this end during his first visit. He noted that the Office of the United Nations High Commissioner for Human Rights is planning a specific seminar on this issue within its technical cooperation programme.

69. On the situation of women, the Special Rapporteur was informed that, at the end of July, 21 women, mostly from the Customs and Excise Forces (CEF) Headquarters in Khartoum, were dismissed. Allegedly, none of them was sent a written official service termination letter. Instead, they were all informed verbally and individually by the CEF Chief in Khartoum. No reason was provided for the dismissal.

70. According to the source, the list of dismissal does not include any male officer. Moreover, it was reported that female officers have continuously been ignored in promotions compared to their male colleagues. The whole matter appears to be currently handled by the Ministry of Interior.

71. Some sources reported unrelated information whereby, during a conference held in the Women's College of Omdurman Islamic University in May 2002, sponsored by the Ministry of Guidance and Endowment, a female gynaecologist spoke in support

of female genital mutilation and recommended the introduction of "Islamic medical doctrine" in the training of medical personnel. A religious leader who also participated at the conference reportedly stated that female circumcision was an Islamic practice referred to in the Sunna.

72. While acknowledging that the Government has not supported such a practice so far and praising efforts including by the civil society aimed at eradicating harmful traditional practices, the Special Rapporteur hopes that discussions such as the one held at the Women's College will not result in a change of attitude on this issue, which would represent a setback in the fight for the eradication of female genital mutilation.

IV. Other reported violations of human rights

Individual cases

73. Since January 2002, the Special Rapporteur addressed 11 urgent appeals to the Government of the Sudan, concerning 157 individuals. All appeals were sent jointly with thematic Special Rapporteurs. One reply has been received from the Government. While individual cases raised and discussed in Khartoum seem to receive immediate attention from the Sudanese authorities, the Special Rapporteur regrets that this does not seem to be the case for communications sent.

The situation in Darfur

74. The Special Rapporteur received information on the situation in Darfur, western Sudan, which points to a number of factors, including the worsening of the socio-economic situation, the ongoing "local" conflict, opposing the Fur and Massaleit tribes and Arabs from Darfur and neighbouring Chad, and drought, which has further exacerbated the fight among tribes over land and pastures. As a result, villages have been destroyed and depopulated, leading to a high rate of displacement. In addition, crime has reportedly increased, as the displaced are desperate to ensure their and their family's survival. Sources report that up to 1 million people currently risk starvation.

75. The Special Rapporteur met with representatives of the Massaleit community in exile in Cairo, who claimed that the depopulation of villages, displacement and changes in land ownership are allegedly part of a government strategy to alter the demography of the region.[15] So far, four villages in the region have reportedly been depopulated following attacks by militia from Arab tribes.

76. During his last visit, in discussions with government authorities, the Special Rapporteur expressed concern about the situation in Darfur. He was informed that the conflict in Darfur results from intertribal disputes deriving from the competition for land between pastoral and crop farmers in the area.

77. According to information received, in spite of the fact that authorities are aware of the situation and although a number of perpetrators have been identified by the leaders of the Fur and Massaleit tribes, no investigations have been made nor have perpetrators been brought to justice.

78. Instead, the Special Rapporteur was informed that these leaders have recently been arbitrarily arrested and detained (see below, para. 81 (b) and (c)), which, according to some sources, tends to reinforce claims of the Government's involvement through the support of the Arab militias.

79. As for the Special Courts, the Special Rapporteur studied Decree No. 21/2001 on the establishment of the Special Court at El-Fashir, issued by the Wali of northern Darfur on 1 May 2001. According to the decree, if the accused withdraws his confession, the court shall take into account that confession as evidence against the accused. The accused has no right to withdraw his confession.[16] In addition, lawyers have no right to appear before the courts to represent suspects, but a suspect's friend can appear instead to provide help before the court.[17]

80. A similar court was also established in Nyala, southern Darfur. This judicial body, reportedly established in accordance with article 6 (2) of the Law of Emergency and Protection of Public Safety of 1997 and with the State of Emergency No. 1 of 1998, by the Governor of southern Darfur, deals with crimes of armed robbery, crimes against the State, as well as crimes relating to drugs and public nuisance. It is said to operate with one civil and two military judges. Lawyers are reportedly forbidden to stand before the Special Court and plaintiffs are given the right to appeal only when sentenced to death or amputation. Under such circumstances, the appeal must be made within seven days of the sentence to the District Chief of Justice, whose decision is final.

81. Since his visit, the Special Rapporteur has continued to receive information relating to individual cases of human rights abuses. In view of the gravity of the situation in western Sudan, in the present report, the Special Rapporteur refers to the following cases:

(a) Fourteen prisoners charged with armed robbery were reportedly sentenced to death by the Nyala Special Court No. 1. According to information received, on 8 May 2002, five of the detainees, namely Mohamed Abakar Haroun, Khaleel Tahir Bashier, Adam Abd Allah Mohamed, Ahmed Jouma Mohamed and Habieb Ali Abd Algadir, were sentenced to death by hanging and crucifixion by the Nyala Special Court. The other detainees, namely, Adam Musa Biraima, Adam Alzain Ismail, Abd Allah Wadai, Mohamed Abd Alrasoul Thabit, Mohamed Abd Almahmoud Mohamed, Abd Allah Mukhtar, Hafiz Suliman Yahya, Hamad Mohamed Adam and Dakhru Abd Allah Jouma, were all reportedly sentenced to death by hanging by the same court. Reportedly, the aforementioned prisoners did not benefit from legal representation during their respective trials. Their lawyers have reportedly launched an appeal with the District Chief of Justice, whose outcome was still being awaited at the time of submission of the present report;

(b) Salah Mohamed Abdel Raham, a community leader from the Rizeigat tribe involved in tribal people-to-people peace initiatives, was reportedly arrested by security forces on 9 July 2002. Reportedly, no reason was given for the arrest and no warrant was issued. The source indicates that Mr. Abdel Raham was arrested in Darfur by security forces while convening a tribal reconciliation conference between the Rizeigat and Dinka from Bahr el-Ghazal. In order to convene this conference, Mr. Abdel Raham had travelled to Dinka areas, some of which are located in regions controlled by SPLA. The forces involved in the initial arrest maintain that he was released then subsequently rearrested by security personnel from a different part of Darfur because of his connection with 26 men detained after clashes between the Rizeigat and Ma'aliya, both of them Arab tribes. However, Mr. Abdel Raham was allegedly not involved in these clashes, as he was in SPLA-controlled areas at the time of the incident. Since his initial arrest, Mr. Abdel Raham has reportedly not been seen. His family was denied permission to visit him and could not obtain details of his whereabouts. He was tortured by security forces in 1997 and suffers poor health and recurrent back problems and pain as a result;

(c) Eleven leaders from the Fur tribe were reportedly arrested by security forces in Zalingei, western Darfur, on 11 July 2002. Allegedly, they were all involved in reporting recent attacks against the tribe by Arab militia, and include: Adam Abdel Rasool (teacher); Abdel Moula Aam Abdel Moula (farmer); Gialani Omer (driver); Abdel Wahid Mohamed Ahmed (advocate); Mohamed Ahmed Abdel Moula (teacher); Amir Bahr el Din (farmer); Abdo Harran (farmer); Abdel Gabbar Abdalla (ommda — tribal leader); Abbo Hassan (shartai — tribal leader); Abdel Karim Mohamed Abkr (ommda); Abdalla Muhagir (sheikh — tribal leader). Allegedly, no reasons for their arrest have been provided, no arrest warrants were served and no charges have been pressed against these persons. Abdel Wahid Mohamed Ahmed is in a very poor state of health and only has one lung;

(d) Four men were reportedly arrested on 15 July 2002, including: Ali Shogar (health worker in Nartiti); Mohamed Abdel Rasool (teacher and chairman of the labourers' trade union in Zalingei); Mohamed Ismael (pharmacist at Zalingei hospital); Adam Ahmed (transport commission agent). Allegedly, none of the foregoing detainees has been allowed to receive family visits since his arrest, hence the source's fear that they may be subjected to torture during their detention;

(e) Further to their arrest on 6 May 2002, following a conflict between members of the Rizeigat and Ma'aliya tribes, on 17 July 2002, 88 of the 96 members of the Rizeigat tribe were sentenced to death by hanging or death by hanging and crucifixion, following what several sources considered to be an unfair trial carried out by the Special Court in Nyala, southern Darfur. The Court was headed by Judge Mukhtar Ibrahim Adam and two military and police officers. Two of the 88 persons were 14-year-old boys. According to the information received, a total of 136 men were arrested on 6 May 2002 as a consequence of the tribal conflict, which resulted in the deaths of 10 people. A total of 96 persons from the Rizeigat tribe were then reportedly charged with armed robbery, murder and possession of arms.[18] According to information received, 35 of the detainees, including 3 children, were reportedly subjected to torture during their detention between 21 and 22 June 2002, by the province Chief of Police, an interrogation officer

(Ahmed), and four assistants (Omer, Nasr el Din, Musa and "Abu Indelang"). Reportedly, 7 of the 96 persons have been acquitted and one has been sentenced to 10 years' imprisonment as a result of the trial. Reportedly, lawyer Mohamed Fadl Hamid, who is acting on behalf of the defendants, submitted an appeal to the District Chief of Justice on 20 July 2002. Serious concern was expressed about the physical and psychological integrity of the 86 men and 2 children sentenced to death, particularly the use of torture and breaches of internationally recognized fair trial standards and guarantees, including the right to be tried by an impartial tribunal, the right to appeal before an independent tribunal and the right to legal representation, alongside the fact that these civilians were tried by what is effectively a military tribunal.

V. Conclusions and recommendations

General observations

82. The Special Rapporteur welcomes the signing of the Machakos Protocol, which, in his view, may open the way for successful peace negotiations. This may be an important step forward, which may provide a chance not to be missed to put an end to war-related human rights abuses. However, for peace to be sustainable it is paramount that the issue of human rights and democratization also be addressed and placed at the heart of the peace talks as well as in their implementation, including in the interim period.[19] Moreover, the building up of a climate of mutual trust and confidence will facilitate reconciliation.

83. Any analysis of the human rights situation in the Sudan should be accompanied by constructive advice by the international community aiming at developing concrete strategies of assistance for the post-conflict scenario.

84. Of key importance is the democratization of the country through the creation and/or strengthening of the civil society. The Special Rapporteur, while acknowledging that since 1998 the Government had been making more efforts to that end than other countries in the region, also noted that the end of 2000 marked a setback, whereby no remarkable progress had been made in spite of the many commitments made but not yet fulfilled at the time of submission of the present report. The burden represented by the war cannot provide any justification for human rights abuses.

85. The Special Rapporteur encourages the Government not to abandon this path and expresses his hope that during his next visit he will be able to witness concrete evidence and progress in this direction. In this context, the Special Rapporteur acknowledges the good climate of cooperation with the Government.

86. So far, the human rights situation in the Sudan has not improved. Main issues of concern relate to the continuation of the state of emergency, the amendments made to the National Security Forces Act and the virtual impunity enjoyed by the security services, the persistence of press censorship and the limited room for political activities enjoyed by opposition parties.

87. In addition, the deterioration of the situation in Darfur, the establishment of Special Courts and the recent cases of death sentences have been the object of widespread concern.

88. An increase in military activities could also be observed. While the ceasefire in the Nuba Mountains is still holding, the redeployment of troops in western Upper Nile has led to an intensification of war activities in the oil area. The plight of civilians, particularly internally displaced persons, remains of concern.

The peace process

89. The Special Rapporteur joins the European Union's call to "all parties to the conflict (...) to adhere to the agreement and to work in a dedicated manner to accomplish a comprehensive peace agreement when negotiations resume in mid-August 2002",[20] aimed at resolving outstanding issues. The support of all civil society, ethnic and political groups within the Sudan to the resolution of a conflict in which not only North and South have been involved is key for this agreement to start paving the way for a durable and just peace.

90. In this connection, the Special Rapporteur refers to the report of the British Associate Parliamentary Group on Sudan, which recommends that donors give increased support to grassroots peace initiatives and facilitating civil society involvement in the peace process.[21]

91. Equally important is the issue of wealth-sharing, including oil revenues, particularly in the context of the formulation of a repatriation, resettlement, rehabilitation, reconstruction and development plan, as foreseen in the Machakos Protocol.

92. To this end, in order to ensure adequate implementation of the peace agreement, it is important that an appropriate mechanism for international monitoring be put in place. In view of the specific nature of the monitoring, it would not be appropriate for military personnel to be utilized to this end.

The conflict

93. In this connection, the Special Rapporteur noted a relevant commitment made by the Government within the European Union-Sudan dialogue, i.e., (a) that the Government would not deliberately target civilian populations or installations and (b) that it would guarantee access for humanitarian operations while keeping exceptions to a strict minimum.

94. Civilians have continued to be targeted. The Special Rapporteur therefore encourages all the parties to the conflict to use all their influence to put an immediate end to violations of human rights and international humanitarian law.

95. He also noted that the Government signed the agreement to protect non-combatant civilians and civilian facilities from military attack and welcomes this development, along with the Government's decision to allow some monitoring of incidents taking place within the context of the war. He will continue to monitor the situation to see how these commitments are implemented on the ground.

96. As for access, the Special Rapporteur regrets that many instances of flight restriction or denial have occurred, affecting numerous locations in southern Sudan, and strongly condemns the use of flight denials as a weapon of war.

The oil issue within the context of the right to development

97. Oil is exacerbating the conflict. The use of oil revenues, the right to development and the need to develop a wealth-sharing arrangement with the South are inextricably linked elements to be considered for a sustainable peace.

98. The Special Rapporteur referred to the United Nations Declaration on the Right to Development, to reiterate that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".[22]

99. In paragraph 11 of its resolution 2001/9, the Commission on Human Rights stresses the necessity of establishing, at the national level, an enabling legal, political, economic and social environment for the realization of the right to development and emphasizes the importance of democratic, participatory, transparent and accountable governance, as well as the need for efficient national mechanisms such as national human rights commissions, to ensure respect for civil, economic, cultural, political and social rights, without any distinction.[23]

100. The use of oil revenues should be a transparent process based on a clear wealth-sharing arrangement involving all relevant stakeholders.

Transition to democracy

Individual cases

101. The Special Rapporteur deplores the recurrence of cases of human rights violations and lack of official action to investigate and sanction such abuses and calls upon the Government to act promptly upon urgent appeals received and to respond to them.

102. In view of the nature of the majority of the cases received and keeping in mind a pattern that points to the security agents being invariably involved in human rights abuses, the Special Rapporteur reiterates the need to bring the security police under the rule of law, that relevant legislation therefore be revised and that impunity be fought in the most determined manner.

Freedom of the press

103. The National Press Council should be empowered to play a more significant role in the

defence of freedom of expression. The lifting of censorship should be effective.

Freedom of religion and belief

104. The Special Rapporteur noted that, while the Advisory Council for Christians has been set up, full freedom of religion has not yet been achieved in the Sudan. In this connection, he encourages the Government to provide further clarifications on the role of such a body, in the hope that it would be empowered to fight effectively against religious discrimination.

The situation of women

105. In keeping with its relevant resolutions (1996/73, 1997/59, 1998/67, 1999/15, 2000/27 and 2001/18), whereby the Commission on Human Rights stressed the importance of the Special Rapporteur continuing to apply gender perspective systematically in the reporting process, including information collection and recommendations, during his visits, the Special Rapporteur paid particular attention to the situation of women, including in the framework of the conflict.

106. He noted with concern some recent elements which appear contrary to the emancipation of women and encourages the Government to clarify its position and allow for open discussions on this issue, including with a view to acceding to the Committee on the Elimination of Discrimination against Women.

107. Women should be empowered to play an active role in the peace process.

Ratification of international instruments

108. The Special Rapporteur reiterates his appeal to the Government to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was signed in 1986, and to accede to the Convention on the Elimination of All Forms of Discrimination against Women, in line with the commitment which government officials expressed in this respect.

Abductions

109. The Special Rapporteur calls upon the Government to do more with a view to eradicating abductions, particularly in connection with the incident referred to in paragraph 53 of the present report, into which an investigation should be launched. Any relevant information received will be reflected in his next report to the Commission on Human Rights.

110. The need for strong advocacy remains and the Government should provide the necessary political and financial backing to fight effectively against this practice.

111. Perpetrators should be brought to justice, thus ending the impunity from which they have benefited so far.

Darfur

112. The Special Rapporteur expressed deep concern about the establishment of Special Courts, which are not in keeping with relevant international standards. In particular, he wishes to refer to article 14 of the International Covenant on Civil and Political Rights, adopted by the General Assembly by its resolution 2200 A (XXI), whereby everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (para. 1) and in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him ...; not to be compelled to testify against himself or to confess guilt (para. 3).

113. Article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly by its resolution 3452 (XXX), provides that any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

114. The Special Rapporteur also wishes to refer to relevant recommendations made by the Special Rapporteur on torture (A/56/156, para. 39).

SPLM/A

115. The Special Rapporteur calls upon SPLM/A to work for the development of genuine democratic structures to replace the existing military-based ones and underscores the importance of doing so as a crucial condition for the implementation of the right to self-determination.

116. As for violations of human rights occurring within the framework of the conflict, the Special Rapporteur condemns disregard for international standards and appeals to SPLM/A and allied militias to do their utmost to prevent human rights violations.

Technical cooperation programme of the Office of the United Nations High Commissioner for Human Rights

117. The Special Rapporteur reported on the status of implementation of activities foreseen under the above-mentioned programme in the presentation of his report to the Commission on Human Rights.

118. A new 12-month phase of the programme started in April, focusing on an increased number of activities, some of which constitute more in-depth follow-up training aiming at the modification of the relevant manuals to incorporate relevant international human rights standards. The Special Rapporteur will continue to follow any new developments in this field, while reiterating that progress will only be measured on the ground in terms of significant impact on the situation of human rights. The recurrence of individual cases and specific patterns of violations will be important elements to assess the success of such an endeavour.

119. The Special Rapporteur encourages the international community at large, donors and NGOs actively to support, including financially, the Office of the United Nations High Commissioner for Human Rights and the Government of the Sudan in their cooperative endeavour.

The role of the United Nations

120. Finally, as discussions are ongoing on an effective way to monitor implementation of the peace process and in view of the fact that any initiative — be it strictly in the field of human rights, or within the framework of the peace process — should find its place in the context of a wider political initiative, the Special Rapporteur believes that strong political involvement by the United Nations is urgently needed to support the peace process, for the neutrality and objectivity that characterize its action as opposed to single Governments' initiatives and for its potential to bring on board the whole international community in an effective and sustainable way.

Notes

[1] A statement made on 22 July 2002 by the New Sudan Council of Churches on the Machakos Protocol for peace of 22 July 2002.

[2] International Crisis Group (ICG), "Dialogue or Destruction? Organizing for Peace as the War in Sudan Escalates", Africa Report No. 48, Nairobi/Brussels, 27 June 2002.

[3] Some sources refer to "at least 18 dead and more than 100 wounded".

[4] Lundin Oil stopped its activities in the Sudan in view of the security situation. Activities had not been resumed when the present report was submitted.

[5] The European Coalition on Oil in Sudan (ECOS) report, "Depopulating Sudan's oil regions", refers to interviews with defectors from proxy militias, showing that they are instructed systematically to kill and forcibly displace civilians ("The use of proxy militias by the Government of the Sudan", p. 14).

[6] Some observers report that about 50 per cent of the national budget is allegedly spent on producing or buying weapons and military equipment.

[7] Presidential Decree 14/2002 of 26 January 2002.

[8] CEAWC has now been designed to function as a community-based project, which foresees the facilitation of the Government within a tribal-owned process. Leaders at the grass-roots level have been sensitized with a view to raising awareness within their own communities. Two reconciliation conferences are also scheduled to take place in western Kordofan and southern Darfur before the end of April with a view to solving the issue in a traditional manner. Legal

proceedings are foreseen as a last resort measure, upon completion of the one-year period.

[9] Slavery, Abduction and Forced Servitude in Sudan, Report of the International Eminent Persons Group, 22 May 2002, pp. 7 and 8.

[10] Ibid., p. 35.

[11] Press release: President al-Bashir kicks off a campaign for eradication of abduction, 14 May 2002. Provided by the Embassy of the Republic of the Sudan, New York, through the Permanent Mission of the Sudan to the United Nations at Geneva.

[12] In one of his interviews, the Special Rapporteur was told clearly that SPLM/A is not a movement, it is an army.

[13] Journalists, students and human rights defenders continued to be particularly targeted.

[14] On 20 June 2001, the Parliament approved an amendment to the National Security Forces Act, endorsed by the President on 4 July 2001, which allowed security forces to arrest and detain individuals for several months without judicial review, depending on the crime. Human rights organizations lamented that such an amendment further restricted the rights of the detainee, in comparison with the previous text.

[15] In this regard, the Special Rapporteur took note of the [illegible] allegations received in connection with the situation in oil-rich western Upper Nile.

[16] Decree 21/2001, Establishment of a Special Court at El-Fashir, Procedures, 5(e).

[17] Ibid., 5(g).

[18] These crimes can carry penalties of death by hanging, death by hanging and crucifixion, cross amputation or amputation.

[19] In this connection, the Special Rapporteur refers to his statement made in the Commission on Human Rights at its fifty-eighth session: "At the same time, however, I remain convinced that, in order to achieve a sustainable and just peace, it is paramount to focus not only on the symptoms but also on the root-causes of the conflict and that therefore a political follow-up is needed. It is therefore key that all relevant actors — including the civil society — be included in the process and that peace negotiations go hand in hand with a process of confidence-building and democratization, at the heart of which human rights must find their place. The momentum must be preserved."

[20] Statement on the Sudan, issued on 23 July 2002, by the Presidency of the European Union on behalf of the European Union.

[21] Associate Parliamentary Group on Sudan, Visit to Sudan, 7-12 April 2002, p. 14.

[22] Resolution 41/128, annex.

[23] See E/2001/23 (Part I)-E/CN.4/2001/167 (Part I).